

Montana Water Court  
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**FILED**  
04/07/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43B-0772-R-2022  
Lambert, Kathryn  
5.00

MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

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CLAIMANT: Eugene Forster; Barbara Johnson; Royal Johnson

**CASE 43B-0772-R-2022**  
43B 36595-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

This claim appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

The issue remark was not addressed through the objection process. The Water Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. As agreed by Barbara Johnson, the January 12, 2023 Court Minutes and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA were entered directing the claimants to meet with the Montana Department of Natural Resources and Conservation [“DNRC”] to resolve the issue remark. These Court Minutes also state: “Ms. Johnson confirmed that Eugene Forester is deceased, that they purchased the property from Mr. Forester, and that he should be removed as an owner of this water right. She will discuss this with the Bozeman DNRC Regional Office.” To date, no ownership update has been filed so Eugene Forster remains listed as a co-owner.

On February 10, 2023 the DNRC Memorandum was filed. On February 23, 2023 the Johnsons filed their Response stating they agree with the DNRC Memorandum recommendation. These documents are viewable in the Court’s FullCourt Enterprise case management system.

#### APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDING OF FACT

The Preliminary Decree states that the point of diversion legal description is SESENE

section 33, T1N, R15E, SWEET GRASS. The legal description should be SWSENE section 33, T1N, R15E, SWEET GRASS. The point of diversion issue remark should be removed as addressed and resolved.

#### CONCLUSION OF LAW

The information provided by the claimants and the DNRC is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

#### RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

#### **ELECTRONICALLY SIGNED AND DATED BELOW**

#### Service Via USPS Mail:

Eugene Forster  
(Return mail received)  
9 Greycliff Creek Ln  
Greycliff, MT 59033

Barbara Johnson  
Royal Johnson  
PO Box 1684  
Big Timber, MT 59011

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 36595-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** EUGENE FORSTER  
PO BOX 23  
GREYCLIFF, MT 59033  
  
ROYAL JOHNSON  
PO BOX 1684  
BIG TIMBER, MT 59011  
  
BARBARA JOHNSON  
PO BOX 1684  
BIG TIMBER, MT 59011

**Priority Date:** AUGUST 16, 1911

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 2.27 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 2 - MODERATELY HIGH

**Maximum Acres:** 60.00

**Source Name:** MILLIGAN CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSENE	33	1N	15E	SWEET GRASS

**Period of Diversion:** MARCH 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Period of Use:** MARCH 15 TO OCTOBER 15

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	20.00		NE	33	1N	15E	SWEET GRASS
2	20.00		SE	28	1N	15E	SWEET GRASS
3	20.00		SW	27	1N	15E	SWEET GRASS

**Total:** 60.00

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

36595-00

36596-00